pretation. In my view, however, it is wrong to say that our Ordinance is silent. It defines a "tenant", it defines a "member of his family". These definitions differ on the one hand from the English definition and on the other from the Singapore definition, and the fact that they differ goes to show to my mind that our Ordinance is not silent on either point but is indeed extremely vocal.

If these views be correct, they lead to the conclusion in the present case that the administrator in possession, the present respondent, was an unlawful occupant from the expiration of the notice to quit and that the appellant should have his order for possession and damages, which, as they have not been assessed elsewhere, I myself would put them at $67.50 a month which is the controlled rent from 1st January, 1960, until the date of giving up of possession.

I would, therefore, allow the appeal with costs. There should be an order for possession and an order for damages calculated at the rate of $67.50 a month from 1st January, 1960, until the date of giving up possession with interest at 6% as from the date of judgment.

Hill and Good JJ.A. concurred.

Appeal allowed.

Solicitors: *Bannon & Bailey; Balwant Singh & Co.*

ZAINUDDIN v. LIEW PAK FUN & ANOR.

[O.C.J. (Hashim J.) May 9, 1962]

[Kuantan — Civil Suit No. 2 of 1961]

Damages — Personal injury — Special and general — Victim member of State Legislative Assembly — Whether such position did raise his status — Whether to be taken into account in assessing damages.

The plaintiff, a member of the Pahang State Legislative Assembly, sustained a fracture of his right leg as a result of being pinned between his car and a taxi. The plaintiff claimed $2,780 as special damages and $50,000 as general damages. The defence admitted liability but disputed the quantum of damages.

Held: (1) the special damages should be assessed at $400;

(2) the plaintiff was only entitled to $20,000 general damages as he was an ordinary member of the public and did not hold any special position in business or socially. Being an elected member of the State Legislative Assembly did not raise his status to any great extent and a permanent limp did not reduce his ability as a member of the State Legislative Assembly or his social standing.

Cases referred to:—

(1) *British Transport Commission* v. *Gourley* [1956] A.C. 185 at p. 206.
(2) *Low Ah Tow* v. *Yusof* [1954] M.L.J. 112.
(3) *Drennan* v. *Greer* [1957] M.L.J. 77.
(4) *Proctor* v. *Peebles (Papermakers) Ltd.* [1941] 2 All E.R. 80.
(5) *Harrison* v. *Liverpool Corporation* [1943] 2 All E.R. 449.
(6) *Devine* v. *British Transport Commission* [1954] 1 W.L.R. 686.
(7) *Cooper* v. *Whittingham* (1880) 15 Ch. D. 501.
(8) *Jones* v. *Curling & Anor.* (1884) 13 Q.B.D. 262.

CIVIL SUIT.

S. M. Yong for the plaintiff.

M. Edgar for the defendants.

Cur. Adv. Vult.

Hashim J.: This is a claim for $2,780 as special damage and $50,000 as general damage. The defence admits liability but disputes the quantum of damages.

The following facts are not disputed. On the evening of October 8, 1958 the plaintiff stopped his car at the Tanah Puteh ferry Kuantan and was waiting to cross the ferry. He got out of his car and went to the front of the car. While he was there defendant's lorry driven by the second defendant came up from behind and drove into the rear of plaintiff's car. There was a taxi in front of plaintiff's car. The plaintiff was pinned between his car and the taxi and sustained a fracture of the right leg.

In dealing with this case, I would quote a passage from Lord Goddard's judgment in *British Transport Commission* v. *Gourley* (1) which I think is relevant in this case. The passage reads: "In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be specially pleaded and proved. This consists of out-of-pocket expenses and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future."

I shall now deal with the special damage. Firstly, the plaintiff claims $1,260 as loss of salary for 3 months at $420 a month. Now the only evidence that has been adduced to support this claim is that of the plaintiff. He stated he was the manager of Aminah and Mohamed Sheik Estate. I think he should have produced evidence to support his claim in this respect. He should have called his employer and/or produced some documents to substantiate his claim. I do not think his bare word is sufficient. I therefore hold plaintiff has not proved his claim in respect of this item.

The second item is for $900 for the supply of special and nourishing food for 3 months at $10 a day. According to the plaintiff he had soup, rice, meat and vegetables for his meals which were brought to the hospital. For soup he had 2 bottles of Brand's essence of chicken a day. He stated he did not have the hospital food because it was not good enough and not sufficient enough. Plaintiff called the manager of Yong Soon & Co. to say that the shop was one of the biggest provision shops in Kuantan and that plaintiff's wife used to buy essence of chicken from the shop once in two or three days. The wife also bought a tin of biscuits once a week. Unfortunately this manager could not produce

any documentary evidence to support the sale. It seems to me that the manager must have a marvellous memory to remember small purchases which took place in 1958 considering that the shop is one of the biggest provision shops in Kuantan. The medical officer who gave evidence stated that the plaintiff was admitted as a first-class patient. It seems strange to me that a person of plaintiff's social standing would find the food served to first-class patients in the hospital as not good enough for him. The medical officer also stated that it was really not necessary for plaintiff to consume 2 bottles of essence of chicken daily while he was in hospital. There is no medical evidence to show that plaintiff had to have "special and nourishing food for 3 months". Plaintiff was admitted on 8.10.58 and discharged on 4.12.58. Four days later he was again admitted into hospital and stayed for about a week. He again stayed in the hospital for another week. He was again admitted to hospital on 19.2.59 and discharged on 26.2.59. He was then treated as an out-patient. According to the medical officer plaintiff was readmitted so many times because he had to have the plaster changed. All in all it would appear that the plaintiff was an in-patient for about 78 days. As there is no evidence to show that the plaintiff has paid any hospital fees it may be presumed following the usual practice, the Pahang Government paid for plaintiff's hospital's fees as he is a member of the Pahang State Legislative Assembly. I find that plaintiff has not proved at all that he in fact spent $900 on "special and nourishing food". I think that as plaintiff elected to have food of his own choice and not as prescribed by the medical officer his claim for the second item fails.

The third item is for $360 being the salary paid to a driver for 3 months while the plaintiff was in hospital. Incidentally, the evidence would appear to indicate that plaintiff was in hospital for about 78 days, that is to say, less than 3 months. It seems strange to me that a person of plaintiff's standing should pay $120 a month to a driver. It is a notorious fact that drivers in the East Coast are not highly paid and the average salary for a driver is between $80 to $100 monthly. I think $100 a month would be a fair salary. I therefore allow $300 in respect of the third item.

Plaintiff called the motor repairer to give evidence in respect of the fourth item. His evidence was very sketchy indeed. He simply stated that the cost of the repairs was $260 but could not produce any receipt or documents. He also did not give particulars of the repairs. From the evidence it would appear that the damage to plaintiff's car could not have been great as the car was simply pushed forward and knocked against the rear of the taxi. It would be reasonable to assume that the damage was to the bumpers rear and front and it does appear that $260 would be rather excessive for such repairs. I would think $100 would be a reasonable and fair cost for the repairs.

I would therefore assess special damage at $400.

I would now deal with general damage. Counsel for the plaintiff referred me to many cases, in particular, *Low Ah Tow* v. *Yusof* [2] and *Drennan* v. *Greer* [3]. Counsel for the defendants suggested that $8,500 would be fair. Plaintiff apart from being an elected member of the State Legislative Assembly appears to be an ordinary member of the public and does not appear to hold any special position either socially or in the realm of sport. In his evidence plaintiff stated he played tennis but did not say what brand of tennis. One could play at tennis. There is no evidence to show that he was a keen tennis player and the deprivement of this game would cause him a special kind of disappointment. There is evidence that as a result of the accident one foot is slightly shorter than the other and he now walks with a limp and that the limp will be permanent. Plaintiff says that he is unable to get employment as an estate manager but here again he has not produced evidence to show that in fact he has tried to get employment as an estate manager and has been turned down. As I have stated previously plaintiff appears to be an ordinary member of the public and does not hold any special position in business or socially. I do not think being an elected member of a State Legislative Assembly raises a person's status to any great extent and a permanent limp reduces a person's ability as a member of the State Legislative Assembly or reduces his social standing. It does not also affect his chances of marriage as he is already married. I have considered the quantum of damages very carefully in this case bearing in mind all the authorities quoted by both counsel and I come to the conclusion that the sum of $20,000 as general damage would be a fair and adequate award.

Counsel for the defendants contended that each party should pay its own costs. He based his contention on the fact that plaintiff refused to be examined by the specialist selected by the defendants. He further contended that if full medical report had been supplied the defendants would have been in a position to assess the damages. Counsel for the plaintiff contended that if defendants had admitted liability plaintiff would have submitted himself for examination by defendants' specialist.

Defendants' counsel cited *Proctor* v. *Peebles (Papermakers) Ltd.* [4], *Harrison* v. *Liverpool Corporation* [5], *Devine* v. *British Transport Commission* [6], *Cooper* v. *Whittingham* [7], and *Jones* v. *Curling & Anor.* [8] to support his contention that no costs be awarded to the plaintiff. I think the first three cases cited above deal with agreed medical reports only and therefore appear to have no bearing on the point at issue. In the last two cases cited above there must be misconduct not to allow the costs to follow the event. I would quote a passage in the headnote to *Jones* v. *Curling & Anor.* It reads: "To be 'good cause' within that Rule (Order LXV, rule 1) there must

be facts shewing it would be more just not to allow the costs to follow the event, as for example, oppression or misconduct of either of the parties by which costs have been unnecessarily increased." In this case from the agreed bundle of correspondence put in, there is nothing to show that the defendants admitted liability. No authority has been cited to show clearly that a party should not be awarded costs for refusal to be medically examined by a specialist selected from the other party. I therefore am of the opinion that costs in this case should follow the event.

I therefore give judgment for plaintiff as follows:—

(a) Special damage $400.

(b) General damage $20,000.

(c) Costs.

Judgment accordingly.

Solicitors: *S. M. Yong & Co.; Bannon & Bailey.*

Re ss.177 & 240, Land Code; HEW KEE YIN, Applicant

[O.C.J. (Suffian J.) May 15, 1962]

[K.L. — Originating Summons No. 45 of 1962]

Land Laws — Attestation — Land Code (Cap. 138), ss.177(f) and 240 — Execution of memorandum of transfer in China — Whether properly attested — Attestation of Registrable Instruments Act, 1960, s.3(1)(j).

Practice and Procedure — Declaration by Originating Summons — R.S.C., 1957, O.54A.

This was an application under O.54A for an order that the Memorandum of Transfer executed by one Kok Chow Siew (f) in China and attested to by the Notary Public, Peoples Court, Chau-liang District may be construed and determined as properly executed and attested as required under the Land Code and that the Collector of Land Revenue, Kuala Lipis do accept the said Memorandum of Transfer and register the name of Hew Kee Yin, the son of Kok Chow Siew as proprietor of the land in place of the said Kok Chow Siew, the present proprietor.

Held: the Memorandum was not properly attested because it had not been signed in front of the attestor. In any event it was impossible for this instrument to be attested in this case because there is no diplomatic officer of the Federation in China and no person has been approved in that behalf by the Ruler in Council or the Governor in Council.

ORIGINATING SUMMONS.

K. L. Devaser for the applicant.

Ismi bin Ismail (Federal Counsel) for the Commissioner of Lands.

Cur. Adv. Vult.

Suffian J.: This is an application by originating summons under Order 54A for an order —

(1) that the Memorandum of Transfer executed by Kok Chow Siew (f) in China and attested by the Notary Public, People's Court, Chau-liang District, China, may be construed and determined as properly executed and attested as required by the Land Code (Cap. 138); and

(2) that the Collector of Land Revenue, Kuala Lipis, do accept the said Memorandum of Transfer and register the name of Hew Kee Yin the applicant as the proprietor of the land comprised in Extracts of Mukim Register Nos. 645, 646 and 647, Lots Nos. 720, 665 and 722 respectively, Mukim and District of Kuala Lipis, in place of Kok Chow Siew (f) the present proprietor.

When this first came before me on April 9, 1962 I directed that the Commissioner of Lands be served with the summons. On April 23, 1962 when it was resumed he was represented by Inche Ismi bin Ismail, Federal Counsel.

Kok Chow Siew, the present registered proprietor of the lands concerned, was and is in China and she wanted and wants to transfer the lands to her son in Kuala Lipis. According to the affidavit of her son the applicant, she executed in 1957 before Merdeka Day a Memorandum of Transfer. According to section 177(f) of the Land Code which applied then, her signature should have been attested by "a British consular officer; or any person approved in that behalf by the Chief Secretary." According to section 3(1)(j) of the Attestation of Registrable Instruments Act, No. 1 of 1960 which came into force on 5th May, 1960, and which, in my view, now governs this application, the mother's signature should have been attested "by a diplomatic officer of the Federation, or any person or class or description of persons approved in that behalf by the Ruler in Council or the Governor in Council". The exhibits attached to the summons do not in my view include a Memorandum of Transfer duly executed by the mother, but even assuming that there was such a Memorandum of Transfer, I do not think that I could declare that her signature on it has been properly attested. Her signature, according to the son's affidavit, was attested by two Notaries Public of the People's Court, Chau-liang District, China. Their seals were certified by the Notary Public Attorney-General, Judicial Ministry, Office of Notary Public Attorney, China, whose seal in turn was certified by the Counsellor of the Consular Department, Ministry of Foreign Affairs, the People's Republic of China. These documents were then produced to the Attache of the Office of Her Britannic Majesty's Charge d'Affaires, Peking, who on 20th March, 1957, authenticated the signature and seal of the Counsellor of the Consular Department of the Ministry of Foreign Affairs of the People's Republic of China.

In my view, for this Memorandum to have been properly attested the mother should have signed it in front of the attestor, whoever he may be. She had not done so.

As there is no diplomatic officer of the Federation in China and as no person has been approved in that behalf by the Ruler in Council or the Governor in Council in China, it is in any event impossible for this instrument to be attested in this case. This no doubt causes hardship to the mother, but my view of the law is clear (this instrument has not been properly attested) and I must apply the law regardless of the hardship caused to her.